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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,646	11/10/2000	Sameh A. Fakhouri	YOR920000201US1(13731)	5757

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EXAMINER

BRUCKART, BENJAMIN R

ART UNIT PAPER NUMBER

2155

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/710,646

Applicant(s)

FAKHOURI ET AL.

Examiner

Benjamin R. Bruckart

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 9 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 9 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Claims 1, 9, and 17 are pending in this Office Action.

Claims 1, 9, and 17 are amended.

The objection is withdrawn in light of applicant's amendments.

Claims 1, 9, 17 remain rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,178,529 by Short et al.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1, 9 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 9 and 17 recite the limitation "separating said constraints and policies into a semi-static group and a dynamic group." The limitation is vague and indefinite. Does applicant mean separated into group of clusters or grouping policies and events with clusters?

Claims 1, 9, and 17 recite the limitation "semi-static group." This limitation is broad and indefinite. A static group is one that doesn't change. A dynamic group is one where there is change. Therefore a semi static group is a group that changes? That would still be considered a dynamic group.

Election/Restrictions

Applicant is reminded that upon the cancellation of claims to a non-elected invention (claims 2-8, 10-16, 18-20), the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Response to Arguments

Applicant's arguments filed in the amendment filed 11/30/05, have been fully considered but they are not persuasive. The reasons are set forth below.

Applicant's invention as claimed:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 9, 17 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,178,529 by Short et al.

Regarding claim 1, a method for finding optimal configuration of one or more clusters of resources given a set of constraints and policies (Short: col. 5, lines 46 – col. 6, line 9; col. 7,

lines 38-54; the constraints are the systems resources available and the policy grouping based on capabilities, load, feedback), including concurrently discovering resources, resource groups, availability and unavailability of the resources and resource groups (Short: col. 4, lines 32-65; teaches manual and automatic discovery of resources; col. 6, lines 28-67 teach the states as offline=unavailable, online=available or paused), determining their dependency (Short: col. 5, lines 51) and configuration information such as capacity and quality of service, cluster policies and changes thereto (Short: col. 4, lines 55-65; manages configuration data and membership when changes occur like regroup) as applied to a network of resources (Short: col. 3, lines 46-55), at cluster initialization and dynamically during cluster operation, for supporting a seamless startup and shutdown of cluster of resources according to the current policies and demands on the cluster resources and services (Short: col. 5, lines 46- col. 6, line 9), and separating said constraints and policies into a semi-static group (Short: col. 6, lines 28-45; online) and a dynamic group (Short: col. 6, lines 28-45; offline), and combining said groups only when needed to find said optimal configuration (Short: col. 6, lines 28-45; col. 5, lines 52-55).

Claims 9 and 17 teach the same limitations of claim 1. Although the examiner understands the difference between a method, an apparatus and program storage device, the examiner equates these to the code, hardware, and embodiment of the code in which the code runs the features of the invention. Therefore claims 9 and 17 are rejected under the same grounds as claim 1.

REMARKS

The Applicant Argues:

the Short reference does not teach “separating said constraints and policies into a semi-static group and a dynamic group and combining said groups only when needed to find said optimal configuration.”

In response, the examiner respectfully submits:

The Short reference does teach the cited limitation. Applicant relies upon many arguments and remarks to define the claim limitations instead of including them in the claim

language. Applicant specifically defines the first and second groups as semi-static and dynamic groups. Applicant also argues that semi-static nature of each resource is the type and quality of the supporting services and the dynamic part are the captured events. These limitations are not present in the claim limitations; therefore applicant is arguing an unclaimed feature.

There is also an issue regarding the clear meaning of the limitations constraints and policies. Applicant has defined them broadly in the claims but argues a narrow interpretation of them. The term semi-static seems contradictory in definition. How is a group not dynamic but not completely static? This is broad.

Short does teach the amended claim limitation. Short teaches several status indicators of systems in col. 6, lines 28-45. Status states can be offline, online or paused. The interpreted semi-static group is the online state. Systems determined online are running and grouped with online systems running updates and membership heartbeats. Systems can be offline, when a system not a fully active member of the running cluster and may not be running. Col. 10, lines 31-44 teach that when an object is offline, it is available to be moved to another system. That means the offline group is dynamic. Col. 5, lines 52-55 teach resources are collected into larger groups to combine and management as a unit.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin R. Bruckart whose telephone number is (571) 272-3982. The examiner can normally be reached on 8:00-5:30PM with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Benjamin R Bruckart
Examiner
Art Unit 2155

brb *hbs*

[Signature]
SALEH NAJAR
SUPERVISORY PATENT EXAMINER